

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ALLOY SURFACES COMPANY, INC.	:	CIVIL ACTION
	:	
v.	:	
	:	
PROCON METALS, INC.	:	
	:	NO. 12-6489

MEMORANDUM OPINION

L. Felipe Restrepo
United States Magistrate Judge

May 8, 2013

This action arises from a contract dispute between Alloy Surfaces Company, Inc. (“ASC”) and Procon Metals, Inc. (“Procon”). ASC sued Procon, a supplier of steel coils, for allegedly breaching the parties’ supply contract in connection with the supply of rolled low carbon steel foils of various thicknesses and widths. Procon filed a counterclaim against ASC for failure to fulfill the minimum purchase requirements of said supply agreement.

A three-day bench trial was held beginning on May 2, 2013. Upon consideration of the witnesses’ testimony, all exhibits presented at trial – particularly the parties’ Supply Agreement (Pl.’s Ex.19), the incorporated Terms and Conditions (Pl.’s Ex. 18, Def.’s Ex. 30), and Vendor Corrective Action (“VCA”) records (Pl.’s Ex. 7-13) – and argument from counsel for both parties, the Court finds as follows:

Procon warranted that the articles furnished to ASC pursuant to the Supply Agreement would be free from defect in the material and conform to the applicable specifications. Specifically, Procon agreed to the requirement that the “[w]aviness and edge ripple” of the product supplied be “limited to an amount not injurious to the ASC process.” See Def.’s Ex. 30 at 2-k. Procon breached the Supply Agreement by supplying steel foils to ASC that exhibited

waviness and rippling on the surfaces and edges, such that ASC could not process the steel. ASC exercised its right to reject the non-conforming steel and Procon again breached the Supply Agreement by refusing to accept return of the defective steel foil and issue ASC a credit.

While Procon denies that the steel foil was defective as supplied, the record and the expert testimony of Mr. Abel indicate otherwise. VCA records show that Procon was on notice of repeated problems with the steel it was supplying to ASC through Eagle Brass, and that Procon was given several opportunities to remedy the situation. Moreover, Mr. Abel testified and the evidence supports that the defects in Procon's supply far exceeded any defects ASC experienced from its other suppliers – suppliers whose steel was run through the same process and machines as the steel Procon provided – making it unlikely that the defects occurred in ASC's heating process as suggested by Mr. Stosky. As a result of Procon's breach, ASC was forced to incur an additional \$165, 463.00 in replacement costs.¹

For these reasons, the Court finds that the Plaintiff has met its burden of proof, and enters judgment in favor of the Plaintiff in the amount of \$165,463.00.

An implementing order follows.

¹ ASC also claims damages for costs related to the VCAs in the amount of \$13,526.33 and for coating materials used on 6,382 lbs of defective steel in the amount of \$56,256.69. (Pl.'s Ex. 95). We do not credit these damages because ASC has never separately charged its suppliers for costs related to VCAs or coating materials applied to defective or "scrap" steel – occurrences that the record indicates are inevitable in ASC's manufacturing process – making such costs absorbed by the underlying pricing negotiated in the supply agreements.